HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78768-2910
(512) 463-0752 • https://hro.house.texas.gov

HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, May 13, 2019
86th Legislature, Number 64
The House convenes at 1 p.m.

The bills analyzed or digested in today's *Daily Floor Report* are listed on the following page.

All HRO bill analyses are available online through TLIS, TLO, CapCentral, and the HRO website.

Dwayne Bohac
Chairman
86(R) - 64

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Monday, May 13, 2019
86th Legislature, Number 64

SUBJECT: Revising statutes dealing with human trafficking, prostitution

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Collier, Zedler, K. Bell, J. González, Hunter, P. King, Moody, Murr, Pacheco

0 nays

SENATE VOTE: On final passage, March 27 — 31-0

WITNESSES: *On House companion bill, HB 15:*
For — (*Registered but did not testify*: Melissa Shannon, Bexar County Commissioners Court; Pete Gallego, Bexar County Criminal District Attorney's Office; Jason Sabo, Children at Risk; Chris Jones, Combined Law Enforcement Associations of Texas; Ann Hettinger, Concerned Women for America; Matthew Williamson, Dallas Police Department; Priscilla Camacho, Dallas Regional Chamber; Traci Berry, Goodwill Central Texas; Ender Reed, Harris County Commissioners Court; Will Francis, National Association of Social Workers - Texas Chapter; Jimmy Rodriguez, San Antonio Police Officers Association; Lori Henning, Texas Association of Goodwills; Michael Barba, Texas Catholic Conference of Bishops; Lonzo Kerr, Texas NAACP; Kyle Ward, Texas PTA; Jason Vaughn, Texas Young Republicans; Carl F. Hunter II; Robert Norris; Arthur Simon)

Against — David Gonzalez and Allen Place, Texas Criminal Defense Lawyers Association; (*Registered but did not testify*: John Chancellor and Roy Hunter, Texas Police Chiefs Association)

On — Allison Franklin, Texas Criminal Justice Coalition; Kirsta Melton, Office of the Attorney General; (*Registered but did not testify*: Brian Francis and Colleen Tran, Texas Department of Licensing and Regulation; Manuel Espinosa, Texas Department of Public Safety)

DIGEST: SB 20 would create new offenses related to the promotion of prostitution, revise penalties for some prostitution offenses, modify rules relating to the

admissibility of evidence in human trafficking and prostitution related crimes, revise procedures concerning orders of nondisclosure for certain victims of human trafficking, and amend provisions dealing with licenses for the massage industry.

Criminal offenses. The bill would make numerous changes to laws governing offenses related to human trafficking and prostitution, including creating two new offenses and revising punishments for some sellers and buyers of sex.

Online promotion of prostitution. SB 20 would create two new criminal offenses for the online promotion of prostitution.

A person would commit the offense of online promotion of prostitution if the person owned, managed, or operated an interactive computer service with the intent to promote the prostitution of another person or to facilitate another person engaging in prostitution.

The offense of aggravated online promotion of prostitution would be committed under the same circumstances if the intent was to promote the prostitution of five or more persons or to facilitate five or more persons engaging in prostitution.

First offenses of online promotion of prostitution would be third-degree felonies (two to 10 years in prison and an optional fine of up to $10,000). The penalty would be increased to a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) for second offenses or if the actor had been previously convicted of aggravated online promotion of prostitution. It also would be a second-degree felony if the online promotion of prostitution involved someone younger than 18 years old engaging in prostitution, regardless of whether the actor knew the age of the person at the time of the offense.

First offenses of aggravated online promotion of prostitution would be second-degree felonies. Repeat offenses would be first-degree felonies (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000). An offense also would be a first-degree felony if it involved two or more persons younger than 18 years old engaging in prostitution,

regardless of whether the actor knew the age of the persons at the time of the offense.

These new offenses would be included among the offenses that could be a component of the offense of human trafficking. They also would be included in current provisions that make defendants civilly liable to victims of certain prostitution crimes for related damages.

SB 20 would include the new offenses with other prostitution offenses in statutes dealing with crime victims' rights, the collection of statistics by the Department of Public Safety, eligibility for first offender prostitution prevention programs, and with the interception of communications with a court order.

The bill also would prohibit the release of those convicted of aggravated online promotion of prostitution on intensive supervision parole, a type of release available to TDCJ to manage its population under certain extraordinary circumstances.

Mandatory probation for prostitution, sellers. SB 20 would require judges to place on probation individuals convicted of first misdemeanor and first state jail offenses of prostitution for selling sex. For these defendants, judges would have to require that the defendant participate in a commercially sexually exploited persons court program if there were such a program where the defendant lived. Current requirements that prosecutors agree and that participants consent to participation in such programs would no longer apply, and judges could suspend program fees collected from participants. If a jury assessed punishment in a case, the judge would have to follow the recommendations of the jury rather than the requirements of the bill.

Penalties for prostitution, buyers. SB 20 would revise the penalties for the offense of prostitution in cases of paying for sex. First offenses would be raised from a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) to a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000). All repeat offenses would be state-jail felonies (180 days to two years in a state jail and an optional fine of up to $10,000) instead of class A misdemeanors on second and third offenses

and state-jail felonies for more than three offenses.

These changes would apply to offenses committed on or after the bill's effective date.

Other penalties. The bill would make continuous human trafficking a stackable offense so that if a defendant were found guilty of more than one offense from the same criminal episode, the sentences could run concurrently or consecutively.

The bill also would make the current definition of coercion that applies to sex trafficking of adults applicable to all human trafficking offenses.

Admissibility of evidence. SB 20 would modify rules on the admissibility of certain types of evidence related to human trafficking, sex, and prostitution offenses and would expand the applicability of certain rules for admitting evidence of a victim's past sexual behavior. The changes would apply to criminal proceedings that began on or after the bill's effective date.

Admissibility of extraneous offenses. SB 20 would revise and expand the list of offenses for which certain rules of evidence did not apply and for which evidence of other crimes or acts committed by a defendant could be admitted during a trial. Under current law, this evidence can be admitted for its bearing on relevant matters, including the state of mind of the defendant and the victim and the relationship between the defendant and the victim.

SB 20 would expand the applicability of provisions that under current statute allow evidence to be admitted for certain crimes committed against children younger than 17 years old or persons younger than 18 years old. For some crimes, the provisions would be expanded to cover children younger than 18, and for others the bill would apply to all offenses, whether committed against adults or children. This expansion would include the offenses of human trafficking, sexual assault, aggravated sexual assault, and all sex offenses in Penal Code ch. 21. It also would apply to continuous human trafficking if based on child sex or labor trafficking.

Evidence of victim's past sexual behavior. SB 20 would establish in statute provisions similar to Rule 412 of the Texas Rules of Evidence, which governs the admissibility of evidence of a victim's previous sexual conduct in cases of sexual assault or aggravated sexual assault. The bill's provisions would apply to sexual assault and aggravated sexual assault and to additional offenses listed in the bill, including human trafficking offenses related to sex trafficking, compelling prostitution, certain obscenity offenses involving children, prohibited sexual conduct, and all sex offenses in Penal Code ch. 21.

The bill would make inadmissible, with certain exceptions, reputation or opinion evidence about a victim's past sexual behavior or evidence about specific instances of a victim's past sexual behavior. However, evidence of a specific instance of a victim's past sexual behavior would be admissible under certain circumstance, including if it:

- was necessary to rebut or explain scientific or medical evidence offered by the prosecutor;
- concerned past sexual behavior with the defendant and was offered by the defendant to prove consent;
- related to the victim's motive or bias;
- was admissible under rules that allow some evidence of criminal convictions offered to attack a witness's character; or
- was constitutionally required to be admitted.

The bill would establish procedures, similar to those in Rule 412, for obtaining permission to introduce such evidence.

Orders of nondisclosure. SB 20 would revise statutes governing orders of nondisclosure for certain victims of human trafficking. The bill would expand provisions that currently apply only to defendants who were placed on community supervision (probation) and instead apply them to all defendants who were convicted or placed on deferred adjudication.

The bill also would revise requirements for an order of nondisclosure to be granted. If requested, defendants first would have to assist in the

investigation or prosecution of certain trafficking or promoting prostitution offenses. An exception would be made for defendants who did not provide assistance due to their age or a physical or mental disability that was a result of being a victim of an offense.

The bill would establish the conditions that had to be met for a court to issue an order of nondisclosure for victims of human trafficking, including that the order be in the best interest of justice. The bill would allow multiple requests for nondisclosure to be consolidated and filed in one court, and petitions would have to be filed at least one year after the victim completed a sentence or had the charges dismissed.

Regulation of massage industry, licensees. Under SB 20, the Texas Department of Licensing and Regulation (TDLR) would have to require that applicants for massage therapy-related licenses and license renewals submit fingerprints so that their criminal history records could be obtained. This requirement would apply to license applications or renewal applications submitted on or after January 1, 2020.

SB 20 would prohibit TDLR from issuing massage licenses to persons convicted of or receiving deferred adjudication for human trafficking or prostitution. Current provisions that make licensees convicted of a violation of the massage therapy statutes ineligible for a license for five years after a conviction would be eliminated. The bill would give TDLR discretion in granting, suspending, revoking, or renewing licenses relating to massage therapy.

Students enrolled in massage schools would be required to obtain a permit from TDLR, beginning with students enrolled on or after January 1, 2020. Current provisions that exempt some students who provide massage therapy from licensing requirements would be repealed.

The bill would require massage establishments and massage schools to display a sign with information about services for victims of human trafficking. The sign would have to be displayed by January 1, 2020, and comply with TDLR requirements.

The bill generally would take effect September 1, 2019.

SUPPORTERS SAY:

SB 20 would implement several recommendations of the Texas Human Trafficking Prevention Task Force, which has been working since 2009 to fight human trafficking and to coordinate state resources in that fight. Texas has made strides in attacking this form of modern-day slavery and supporting its victims, and the bill would continue this progress.

SB 20 reflects the consensus of almost 60 agencies and organizations that helped develop and evaluate the task force recommendations. The bill would strengthen prosecutions of human trafficking and related crimes, address the demand for illegal sex that fuels these crimes, better protect victims and address their need for services and legal protections, and tighten regulations on the massage industry to address criminal activity.

Criminal offenses. SB 20 would improve the prosecution of offenses that contribute to human trafficking by creating new offenses aimed at those who used the internet to promote prostitution. These new offenses would be targeted at traffickers and would give law enforcement the tools to go after websites that profit from advertising those involved in prostitution and trafficked individuals. The creation of these offenses also would help implement federal law.

Sellers of prostitution often are victims of crimes, and the bill would acknowledge this by requiring that they receive probation for certain offenses. The bill also would mandate that these victims be connected to existing social services, giving them multiple opportunities to benefit from support systems that could help change their lives, rather than simply incarcerating them. Special court programs would be the best portal to these services and could address victims' individual needs.

Penalties for buyers of prostitution would be increased to reflect that they contribute to prostitution and human trafficking by driving demand.

Admissibility of evidence. Including additional human trafficking-related and sex offenses among those in which evidence of extraneous offenses may be considered would help in the prosecution of traffickers. In these cases, it is important that juries have a full picture of a defendant's course of conduct, including information about conduct that is not part of the

criminal charges.

SB 20 also would codify and expand rules that protect victims from having evidence of their past sexual behavior considered by a court. Victims of the crimes listed in the bill should be afforded the same protections as victims of sexual assault when it comes to this kind of evidence.

Currently, rules of evidence are in both the Code of Criminal Procedure and the Texas Rules of Evidence, so it would be appropriate to use SB 20 to codify those rules.

Orders of nondisclosure. SB 20 would broaden and simplify the process by which victims of trafficking could obtain orders of nondisclosure. Allowing victims to keep their criminal records closed would help them put their lives back together without the collateral consequences that can accompany a criminal record. The bill has safeguards to ensure its provisions would be used in appropriate cases as well as provisions to ensure judicial economy by allowing requests relating to multiple records to be consolidated into one. The bill includes exceptions to the requirement that victims work with law enforcement authorities so that individuals for whom this would be inappropriate could still request orders of nondisclosure.

Regulation of massage industry, licensees. The bill would tighten oversight of the massage industry to help combat trafficking and other crimes, including by requiring criminal background checks. The bill also would aid trafficking victims by requiring the dissemination of victims' services information.

OPPONENTS SAY:

While SB 20 includes many provisions that would help the state in the fight against human trafficking, some provisions could inappropriately reduce judicial discretion or harm victims of prostitution and human trafficking-related crimes.

Criminal offenses. Requiring certain prostitution offenders to receive probation improperly would reduce judicial discretion in these cases. Courts already may impose probation when it is appropriate, and in other

cases it may not be appropriate or defendants may want to choose jail time over probation.

SB 20 should not impose standard consequences for all trafficking victims placed on probation for prostitution. Victims have individual needs, and the bill should allow individualized services to be developed for them, rather than require all of these victims to attend a special court program.

Increasing penalties for soliciting prostitution could elevate them out of proportion to the offense.

Admissibility of evidence. Provisions expanding the admissibility of evidence would apply the changes too broadly by going beyond human trafficking offenses. It would be best to allow any expansion beyond human trafficking laws to be considered through the process under which the court system promulgates court rules rather than through legislation.

Orders of nondisclosure. The ability to request orders of nondisclosure should not be conditioned on a victim working with law enforcement authorities. In some cases, victims deserving of an order of nondisclosure may be afraid of harm from their traffickers, even if the trafficker is behind bars, and not feel able to work with law enforcement authorities.

Regulation of massage industry, licensees. CSSB 20 should not increase licensing requirements on the massage therapy field.

OTHER OPPONENTS SAY:

SB 20 should include more of an emphasis for pre-arrest diversion of victims of human trafficking. Victims may have multiple encounters with the criminal justice system, some of which would be more appropriately handled by diversion to reduce over criminalization.

When increasing penalties for buyers of sex, fines should be raised, and the fines dedicated to victim services. This would help punish those who fuel the sex trafficking industry so that even if they received probation for an offense, they would receive additional punishment.

SUBJECT: Authorizing electric cooperatives to offer broadband on current easements

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Phelan, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, Raymond, Smithee, Springer

0 nays

2 absent — Hernandez, E. Rodriguez

SENATE VOTE: On final passage, April 4 — 30-1 (Campbell)

WITNESSES: *On House companion bill, HB 1446:*
For — William Hetherington, Bandera Electric Cooperative; Jerry Hollingsworth, Bandera ISD; David Kocurek, City of Palacios; Darren Schauer, Guadalupe Valley Electric Cooperative, Inc.; Robert Fiorini and Christina Lopez, Palacios ISD; Eric Craven and Michael Williams, Texas Electric Cooperatives; John O'Brien, Van Vleck ISD; Tim Gescheidle; John Wolters; *(Registered but did not testify*: Kara Mayfield, Association of Rural Communities in Texas; Jason Winborn, AT&T; William Holford, Bluebonnet Electric Cooperative; Bill Kelly, City of Houston Mayor's Office; Glen Smith, City of Palacios; Priscilla Camacho, Dallas Regional Chamber; Dana Harris, Greater Austin Chamber of Commerce; Brian Cunningham, Jackson Electric Cooperative; Bill Lauderback, Lower Colorado River Authority; Andrew Wise, Microsoft; John McCord, National Federation of Independent Business; Sharon Estraca, Palacios ISD; David Edmonson, TechNet; Jeremy Fuchs, Texas and Southwestern Cattle Raisers Association; Ned Munoz, Texas Association of Builders; Jennifer Bergland, Texas Computer Education Association; Dan Finch, Texas Medical Association; Monty Wynn, Texas Municipal League; Ryan Skrobarczyk, Texas Nursery and Landscape Association; Shana Joyce, Texas Oil and Gas Association; Russell Keene, Texas Public Power Association; Deborah Giles, Texas Technology Consortium and Center for Technology)

Against — None

On — Walt Baum, Texas Cable Association; Lynden Kamerman, Texas Telephone Association; (*Registered but did not testify:* Diana Zake, Public Utility Commission)

BACKGROUND: Interested parties have noted that many Texans in rural and isolated areas of the state lack access to high-speed internet. It has been suggested that authorizing Texas electric cooperatives to use their existing easements to offer broadband service could help expand internet access in those areas.

DIGEST: CSSB 14 would authorize an electric cooperative or an affiliate to construct, operate, and maintain fiber optic cables and other facilities for providing broadband service.

Electric cooperatives and affiliates would be allowed to install fiber optic cables over, under, across, on, or along real property, personal property, rights-of-way easements, and other property rights that were owned, held, or used by the cooperative. Easements used to provide electricity or other services could be used to provide broadband.

The bill would define "broadband service" as internet service with the capability of providing a download speed of 25 megabits per second or faster and an upload speed of three megabits per second or faster.

Requirements. Rates charged by an electric cooperative or affiliate for attaching broadband facilities to the cooperative's poles could not be less than the rates the cooperative charged other broadband service providers for pole attachment. Terms and conditions applicable to a cooperative regarding pole attachment also would have to be comparable to the terms and conditions the cooperative applied to other broadband service providers. These restrictions would not limit or restrict a cooperative from installing fiber optic cables in the supply space of the cooperative's poles.

Rates charged by an electric cooperative or affiliate for the provision of electric service could not include any broadband service costs or any other costs not related to the provision of electric service. The bill would require cooperatives and affiliates that provided broadband service to maintain separate books and records of broadband service operations and the

broadband service operations of any subsidiary.

Notice requirements. By the 60th day before an electric cooperative or affiliate began construction of fiber optic cables and other facilities for providing broadband service in an easement or other property, the cooperative or affiliate would be required to provide written notice to the owners of property in which the easement or property right was located. The notice would have to specify the intent to use the easement or other property right for broadband service and whether any new fiber optic cables used for service would be located above or below ground in the easement or other property right.

The notice would have to be sent by first class mail to the last known address of each person in whose name the property was listed on the most recent tax roll of each county authorized to levy property taxes against the property. For 60 days after the notice was mailed, a property owner would be entitled to submit a written protest to the cooperative against the intended use of the easement. If a cooperative or affiliate received a timely written protest, the cooperative or affiliate could not use the easement or other property right for broadband services unless the protestor later agreed in writing to that use or that use was authorized by law.

If an easement or other property right included a provision authorizing the use of the easement or property right for broadband service, the cooperative would not have to provide this notice and property owners would not be entitled to protest.

Limits of provisions. CSSB 14 could not be construed to conflict with or limit existing requirements for the implementation of broadband over power lines. The bill also would not limit or prohibit an electric cooperative's use of the cooperative's fiber optic cables or other facilities to operate and maintain the cooperative's electric transmission or distribution system or to provide electric service.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUBJECT: Using certain language to refer to a person who is deaf or hard of hearing

COMMITTEE: House Administration — favorable, without amendment

VOTE: 11 ayes — Geren, Howard, Anchia, Anderson, Flynn, Ortega, Parker, Sanford, Sherman, Thierry, E. Thompson

0 nays

SENATE VOTE: On final passage, April 17 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 588:*
For — Beth Hamilton, Texas Association of the Deaf; Caroline Burks; Avalyn Hamilton; (*Registered, but did not testify:* Chris Masey, Coalition of Texans with Disabilities; Steven Aleman, Disability Rights Texas; Ender Reed, Harris County Sheriff's Office; Otis Sizemore, Texas Association for the Deaf)

Against — (*Registered, but did not testify:* Ruth York)

On — Bobbie Scoggins, Educational Resource Center on Deafness

BACKGROUND: Government Code ch. 392, establishes the Person First Respectful Language initiative, which establishes preferred terms and phrases to describe persons with disabilities in new and revised law by requiring the use of language that places the person before the disability.

DIGEST: SB 281 would direct the Legislature and the Texas Legislative Council to avoid using in any new statute or resolution the terms "hearing impaired," "auditory impairment," and "speech impaired" in reference to a person who is deaf or hard of hearing. The entities would be directed to replace existing instances of those phrases with "deaf" or "hard of hearing," as appropriate, when enacting or revising a statute or resolution.

The bill would take effect September 1, 2019.

SUPPORTERS SB 281 would require the Legislature and the Texas Legislative Council

SAY: to employ respectful language preferred by deaf and hard of hearing persons. Although the currently used terminology is well meaning, use of the word "impaired" can have a negative connotation by focusing on what the person cannot do.

OPPONENTS SAY: No concerns identified.

SUBJECT: Amending reimbursement policies for Medicaid telemedicine services

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — S. Thompson, Wray, Allison, Frank, Guerra, Lucio, Ortega, Price, Sheffield, Zedler

0 nays

1 absent — Coleman

SENATE VOTE: On final passage, March 27 — 31-0

WITNESSES: *On House companion bill, HB 870:*
For — Cam Kleibrink, Frontera Healthcare Network; Nora Belcher, Texas e-Health Alliance; (*Registered, but did not testify*: Amanda Fredriksen, AARP; Cynthia Humphrey, Association of Substance Abuse Programs; Anne Dunkelberg, Center for Public Policy Priorities; Kelly Barnes, Central Health; Jason Sabo, Children at Risk, Mental Health America of Greater Houston; Jo DePrang, Children's Defense Fund-Texas; Matt Moore, Children's Health; Christina Hoppe, Children's Hospital Association of Texas; Linda Townsend, CHRISTUS Health; Chase Bearden and Chris Masey, Coalition of Texans with Disabilities; Priscilla Camacho, Dallas Regional Chamber; Jesse Ozuna, Doctor's Hospital at Renaissance; Lindsay Lanagan, Legacy Community Health; Christine Yanas, Methodist Healthcare Ministries of South Texas; Alissa Sughrue, National Alliance on Mental Illness-Texas; Will Francis, National Association of Social Workers-Texas Chapter; Nancy Walker, ResCare; Jessica Schleifer, Teaching Hospitals of Texas; Adriana Kohler, Texans Care for Children; Tom Forbes, Texas Academy of Family Physicians; Courtney Hoffman, Texas Association For Behavior Analysis PPG; Jessica Boston, Texas Association of Business; Mimi Garcia, Texas Association of Community Health Centers; Elizabeth Lippincott, Texas Border Coalition; Lee Johnson, Texas Council of Community Centers; Jan Friese, Texas Counseling Association; John Hawkins, Texas Hospital Association; Chris Frandsen, Texas League Of Women Voters; Dan Finch, Texas Medical Association; John Henderson and Don McBeath,

Texas Organization of Rural and Community Hospitals; Clayton Travis, Texas Pediatric Society; Jason Vaughn, Texas Young Republicans; Nataly Sauceda, United Ways of Texas; Paul Carrola; Khrystal K Davis)

Against — None

On — (*Registered, but did not testify*: Erin McManus and Ryan Van Ramshorst, Health and Human Services Commission)

BACKGROUND:

Government Code sec. 531.0216 requires the executive commissioner of the Health and Human Services Commission (HHSC) by rule to implement a system to reimburse Medicaid providers that provide telemedicine or telehealth services. HHSC must encourage health providers and facilities to participate as telemedicine or telehealth service providers but may not require a service be provided to a patient through telemedicine or telehealth.

Sec. 531.0217(c-4) requires HHSC to ensure that Medicaid reimbursement for a telemedicine service is provided to a physician, even if the physician is not the patient's primary care provider, if:

- the physician is an authorized Medicaid provider;
- the patient is a child who received the service in a primary or secondary school-based setting;
- the patient's parent or legal guardian provides consent before the service is provided; and
- a health professional is present with the patient during treatment.

Sec. 531.0217(d) requires HHSC to mandate reimbursement for telemedicine services at the same rate as Medicaid reimburses a comparable in-person medical service.

DIGEST:

CSSB 670 would require the Health and Human Services Commission (HHSC) to ensure that a Medicaid managed care organization (MCO) for a covered service or procedure did not:

- deny reimbursement solely because the covered service or

procedure was not provided through an in-person consultation; and
- limit, deny, or reduce reimbursement based on the health provider's preferred technological platform, as defined in the bill, for delivering the service or procedure.

HHSC also would have to ensure that telemedicine or telehealth services supported patient-centered medical homes by allowing a Medicaid recipient to receive those services from a provider other than the patient's primacy care provider only if:

- the provided service met the same law and contract requirements for a service provided in an in-person setting, including care coordination requirements; and
- the telemedicine or telehealth provider notified the Medicaid patient's primary care provider.

Federally qualified health centers. The bill would require the HHSC executive commissioner by rule to ensure a federally qualified health center (FQHC) could be reimbursed for the originating site facility fee or the distant site practitioner fee or both for telehealth and telemedicine services provided by a Medicaid provider.

HHSC would have to comply with the FQHC reimbursement requirement only if the Legislature appropriated money for that purpose. If the Legislature did not appropriate money, HHSC would be permitted but not required to use other money available to the agency to implement the provision. In determining whether reimbursement for telehealth and telemedicine services was appropriate, Medicaid MCOs would have to continue considering other factors, including whether reimbursement was cost-effective and whether the service provided was clinically effective.

Other provisions. Under the bill, HHSC would have to require reimbursement for telemedicine services at the same rate that Medicaid reimbursed the same in-person medical service. HHSC could not limit a physician's preferred platform by requiring that the physician use a certain platform to receive reimbursement for a telemedicine or telehealth service.

The bill would remove the requirement that a health professional be

present with a child receiving treatment in a school-based setting in order for physicians to receive reimbursement for Medicaid telemedicine services.

The bill would repeal certain provisions including:

- minimum operating system standards for Medicaid telehealth, telemedicine, and telemonitoring services;
- aligning Medicaid reimbursement policies with Medicare reimbursement policies; and
- the expiration date for reimbursing Medicaid home telemonitoring services, among others.

If a state agency determined that a waiver or authorization from a federal agency was necessary for implementation of a provision of the bill, the agency would be required to requested the waiver or authorization and could delay implementing the provision until the waiver or authorization was granted.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

CSSB 670 would reduce health care costs and improve access to care for all Texans, especially those in rural areas, by removing unnecessary and burdensome regulations in Medicaid limiting the provision of telemedicine and telehealth services. By prohibiting a Medicaid managed care organization from denying reimbursements for services solely because those services were provided through telemedicine and telehealth, the bill would help address the health provider shortage in rural areas. The bill also could produce cost-savings by reducing patients' travel expenses and decreasing emergency room visits.

The bill would streamline the Health and Human Services Commission's administration of telemedicine and telehealth in Medicaid, enabling changes in care delivery to be adopted more quickly. By repealing requirements for minimum operating system standards for Medicaid telehealth, telemedicine, and telemonitoring services, the bill would expand opportunities for other innovative technologies to be used in providing those services. Requiring reimbursement for telemedicine

services at the same rate that Medicaid reimbursed the same in-person medical service also would ensure fairer provider payments and reduce confusion among providers and patients.

OPPONENTS SAY:

No concerns identified.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about $15.4 million to general revenue related funds through fiscal 2020-21.

SUBJECT: Adding certain requirements for electronic toll payment using toll tags

COMMITTEE: Transportation — committee substitute recommended

VOTE: 8 ayes — Canales, Bernal, Hefner, Leman, Ortega, Raney, Thierry, E. Thompson

0 nays

5 absent — Landgraf, Y. Davis, Goldman, Krause, Martinez

SENATE VOTE: On final passage, March 27 — 31-0

WITNESSES: For — Arturo Ballesteros, North Texas Tollway Authority; Terri Hall, Texas TURF and Texans for Toll-Free Highways; (*Registered, but did not testify*: Don Dixon; Tom Glass)

Against — None

On — (*Registered, but did not testify*: Tracie Brown, Central Texas Regional Mobility Authority; Brian Ragland, Texas Department of Transportation)

BACKGROUND: Transportation Code sec. 228.057 governs the use of transponders for electronic toll collections on state highways. "Transponder" means a device, placed on or within an automobile, that is capable of transmitting information used to assess or collect tolls. A transponder is considered insufficiently funded when there are no remaining funds in the account in connection with the transponder. Electronic toll collection customer account information, including contact and payment information and trip data, is confidential and not subject to public disclosure.

DIGEST: CSSB 198 would require the Texas Department of Transportation to provide its electronic toll collection customers with an option to authorize automatic payment of tolls through withdrawal of funds from the customer's bank account.

The bill also would require a customer using a transponder for electronic

toll payment for any toll project entity to:

- activate and mount the transponder in accordance with the procedures of the toll project entity;
- provide to the entity accurate license plate and contact information; and
- update such information as necessary.

A toll project entity could not send a toll invoice or notice of nonpayment to the registered owner of a vehicle unless the entity first determined whether there was an active electronic toll collection customer account corresponding to a transponder.

CSSB 198 would require a toll project entity to satisfy an unpaid toll from an active electronic toll collection customer account if the account corresponded to a transponder issued by the entity and was sufficiently funded, given that the customer complied with the above requirements.

Regardless of whether an active account was discovered, the entity could send an invoice or notice for payment if the account was insufficiently funded or if the customer's failure to comply with the requirements of this bill prevented satisfaction of the unpaid toll.

The bill would require a toll project entity to send a customer a notice upon discovery that the customer's transponder did not work correctly more than 10 times in a 30-day period and had to be replaced. The entity would not be required to send additional notice if the customer did not replace the transponder.

A notice or invoice of unpaid tolls would have to clearly state that the document was a bill and the recipient was expected to pay the amount. The invoice or notice could be provided by mail or email, if the person elected to receive electronic notice. An entity would not be required to send an invoice or notice if the entity did not have access to the contact information provided in a customer account.
Notwithstanding the confidentiality of electronic toll collection customer account information, a toll project entity could provide to another entity electronic toll collection customer account information for customer

service, toll collection, enforcement, or reporting requirements. The provision of customer account information would have to ensure the confidentiality of all information.

A contract between entities for the collection of tolls would have to specify which entity was responsible for making determinations, sending notices, and taking other actions required by this bill and ensure that customers did not receive invoices from more than one entity for the same transaction.

The bill would take effect September 1, 2020, and apply only to the collection of a toll incurred on or after that date.

SUPPORTERS SAY:

CSSB 198 would address common frustrations related to electronic toll road billing done through a transponder, also known as a toll tag. The bill would add certain requirements both for toll project entities and for customers to ensure that the billing process was more uniform, predictable, and fair across the state.

Under the bill, toll project entities could not penalize users for toll tag misreads, and users who had an active account and toll tag would not have to pay administrative late fees. Entities would have to determine if a user had an active electronic account before mailing an invoice or notice of unpaid tolls. If a tolling entity determined that a customer had 10 toll tag misreads in a month, the entity would have to send notice to the customer that the tag was malfunctioning, which would cut down on unintentional late fees. The bill also would ensure that customers did their part to avoid tolling issues. Toll users would have to comply with toll project policies when placing their toll tags and provide toll project entities with accurate contact information for billing purposes.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Expanding recovery of attorney's fees for frivolous regulatory actions

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Leach, Y. Davis, Krause, Meyer, Neave, Smith, White

0 nays

2 absent — Farrar, Julie Johnson

SENATE VOTE: On final passage, April 8, 2019 — 29-1 (Schwertner)

WITNESSES: For — Scott Stovall, SDS Petroleum Consultants; (*Registered, but did not testify*: Steven Albright, AGC of Texas-Highway Heavy Branch; Jon Fisher, Associated Builders and Contractors of Texas; Steve Koebele)

Against — (*Registered, but did not testify*: Vanessa MacDougal; Maria Person; Arthur Simon)

BACKGROUND: Civil Practice and Remedies Code sec. 105.002 entitles a party to a civil suit brought by or against a state agency in which the agency asserts a cause of action that is frivolous, unreasonable, or without foundation to recover fees, expenses, and reasonable attorney's fees if the action is dismissed or judgment is awarded to the party.

DIGEST: CSSB 27 would expand the types of cases in which a prevailing party could recover reasonable attorney's fees and costs incurred in defending against an action asserted by a state agency that was found to be frivolous. The bill also would set a $1 million cap on the fees, expenses, and reasonable attorneys' fees that could be awarded in any case involving such actions.

An administrative law judge would be allowed to award the prevailing party in a contested case for which no judicial review was sought reasonable attorney's fees and costs incurred during the case in defending against a frivolous regulatory action. The state agency involved in the case could not vacate or modify the administrative law judge's award of

attorney's fees and costs.

Upon review of decision in a contested case, a court could award the prevailing party reasonable attorney's fees and costs incurred in defending against such an action during the contested case and judicial review of the decision.

The bill would take effect September 1, 2019, and would apply only to a claim filed or a regulatory action taken on or after that date.

SUPPORTERS SAY:

CSSB 27 would protect Texans from frivolous regulatory actions by expanding the types of cases in which a prevailing party could recover attorney's fees and costs incurred in defending against such action.

Many people lack the means to fight frivolous regulatory actions, leading to unnecessary and unjust settlements. The bill would level the playing field by allowing attorney's fees and costs to be awarded in contested cases involving frivolous regulatory actions and judicial review of such cases. The bill also would limit the state's exposure in these cases by capping at $1 million the maximum amount of such an award.

OPPONENTS SAY:

CSSB 27 would set a vague standard for determining when attorney's fees and costs could be awarded by relying on a determination of whether a regulatory action was frivolous, rather than describing what constituted a frivolous regulatory action.

SUBJECT: Expanding employment protections for jury service

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Leach, Y. Davis, Krause, Meyer, Neave, Smith, White

0 nays

2 absent — Farrar, Julie Johnson

SENATE VOTE: On final passage, April 17 — 30-1 (Hancock), on Local and Uncontested Calendar

WITNESSES: *On House companion, HB 3449:*
For — Grace Weatherly, TEX-ABOTA; (*Registered, but did not testify*: Lee Parsley, Texans for Lawsuit Reform; Rene Lara, Texas AFL-CIO; George Christian, Texas Civil Justice League; Ware Wendell, Texas Watch; Alexis Tatum, Travis County Commissioners Court)

Against — None

BACKGROUND: Civil Practice and Remedies Code ch. 122 governs a juror's right to reemployment. A private employer is prohibited from terminating the employment of a permanent employee serving as a juror. A violation is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000).

An employee terminated in violation is entitled to return to the same position held when summoned for jury service if notice is given that the employee intends to return. An employee also is entitled to damages and attorney's fees. An action for damages must be brought within two years of the date on which the employee served as a juror. For a defense to action, an employer must prove that termination was because of circumstances other than the employee's service as a juror.

A court may punish by contempt an employer who terminates, threatens to terminate, penalizes, or threatens to penalize an employee on jury duty.

DIGEST:

SB 370 would prohibit an employer from discharging, threatening to discharge, intimidating, or coercing any permanent employee because the employee served as a juror, or for the employee's attendance or scheduled attendance in connection with the service, in any court in the United States.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

SB 370 would protect Texans' constitutional right to trial by jury by expanding protections for employees serving as jurors. According to judges, jurors often express fear of retaliation from their employers if they are selected to serve on a jury, although they have no choice but to serve when called. The right to trial by jury is a constitutional right that should not be undermined by employers who retaliate or threaten retaliation to intimidate employees.

The bill would close loopholes and bring state law in line with federal law. Currently, state law protects permanent employees of private companies from termination as a result of jury service; however, federal law is more expansive and covers all permanent employees, as well as all possible actions taken by employers as a result of an employee's jury service. The bill would expand protections in Texas law to match those in federal law by applying to both public and private employers and covering discharge, threats to discharge, coercion, or intimidation instead of just termination. It also would protect not just those who got selected for a jury but those who were called for jury duty and not selected.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Prohibiting navigation district leases for oyster harvesting

COMMITTEE: Culture, Recreation and Tourism — favorable, without amendment

VOTE: 8 ayes — Cyrier, Martinez, Bucy, Gervin-Hawkins, Holland, Jarvis Johnson, Kacal, Morrison

0 nays

1 absent — Toth

SENATE VOTE: On final passage, April 11 — 30-1 (Creighton), on Local and Uncontested Calendar

WITNESSES: For — Mauricio Blanco, Union of Commercial Oystermen of Texas; (*Registered, but did not testify*: Joey Park, Coastal Conservation Association Texas; Quint Balkcom, Game Warden Peace Officers Association; Clifford Hillman, Hillman Shrimp and Oyster Co.; Curtis Miller, Miller Seafood Company; Michael Ivic, Oyster Advisory Group; Chad Wilbanks, Prestige Oyster, Miso's Oyster, Gulf Coast Leadership Conference; Hajrulla Halili and Lisa Halili, Prestige Oysters Inc.; Ruzhdi Halili, Prestige Oysters Inc., Gulf Seafood Foundation; John Shepperd, Texas Foundation for Conservation, Texas Coalition for Conservation; W. Brad Boney, Texas Outdoor Coastal Council; Emily Barry; Joseph Ivic; Kenneth Watkins)

Against — None

BACKGROUND: Water Code sec. 60.038 allows a navigation district to sell or lease all or any part of land it owns. Certain lands or flats purchased from the state under Revised Civil Statutes of Texas art. 8225 (1925) or granted by the state in any general or special act may be sold only to the state or exchanged with the state for other land.

Parks and Wildlife Code sec. 76.006(a) permits any citizen of the United States or any domestic corporation to file a written application with the Texas Parks and Wildlife Department for a certificate authorizing the

applicant to plant oysters and make a private oyster bed in the public waters of the state.

DIGEST:

SB 1438 would prohibit a navigation district from conveying or exchanging an interest in real property to an individual or private entity for the purpose of bedding or harvesting oysters, regardless of whether the bedding or harvesting was to be done directly by the individual or private entity or the heirs, successors, or assigns of the individual or private entity.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

SB 1438 would protect the rights of the public to harvest oysters in Texas public waters and ensure the oyster industry continued to positively impact the state's economy by prohibiting a navigation district from conveying property to a private entity.

Prohibiting such a transference by a navigation district would clarify that the Texas Parks and Wildlife Department (TPWD) retains sole authority to manage oyster reefs in public waters through its certificates of location process. This certificate authorizes a person or domestic corporation to plant oysters in a specifically delineated area of the public waters for the purpose of establishing a private oyster bed for a period of 15 years. TPWD has done a good job of managing the state's oyster resources to prevent overharvesting, disease, and pollution.

OPPONENTS SAY:

SB 1438 would interfere with the property rights of a navigation district to lease its submerged land to a private company for oyster harvesting. When the state conveys the land to a navigation district, it becomes the district's and not the state's land to lease. The right of a navigation district to lease its land would not be inconsistent with the Texas Parks and Wildlife Department's authority to regulate the planting and harvesting of oysters because a person still has to obtain a permit from the department before engaging in those activities. The use of private leases by a navigation district would allow the district to raise revenue without increasing taxes

on property owners.

SUBJECT: Increasing transparency for the State Commission on Judicial Conduct

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Leach, Y. Davis, Krause, Meyer, Neave, Smith, White

0 nays

2 absent — Farrar, Julie Johnson

SENATE VOTE: On final passage, March 19 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Mary Tipps, Texans for Lawsuit Reform; Vanessa MacDougal; Maria Person; Jinny Suh)

Against — None

BACKGROUND: Government Code ch. 33 governs the operations of the State Commission on Judicial Conduct, which reviews allegations of misconduct made against Texas judges.

DIGEST: SB 467 would require the State Commission on Judicial Conduct to establish a schedule outlining times for commission action on a complaint. The schedule would have to allow the executive director to approve an extension of time for complaint disposition due to extenuating circumstances, including a need for further investigation. In its annual report to the Legislature, the commission would have to include the number of complaints pending for a year or more for which the commission had not issued a tentative decision and the number of complaints referred to law enforcement.

The commission would have to establish guidelines for imposing a sanction to ensure each sanction was proportional to the judicial misconduct.

The bill would require the commission to maintain on its website information written in plain language on:

- the steps for filing a complaint with the commission;
- the complaint process, including a clear and concise description of the process from filing to disposition;
- confidentiality, including a statement that a complainant was not required to maintain confidentiality of the complaint filed by the complainant; and
- each complaint resulting in the imposition of a public sanction.

The commission would be prohibited from including any confidential complaint information on its website.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

SB 467 would increase transparency on the processing and results of complaints about Texas judges filed with the State Commission on Judicial Conduct. The bill would implement some of the recommendations from the Texas Judicial Council, which published a June 2018 report recommending reforms to improve public trust and confidence in the Texas judiciary.

The bill would ensure that the commission was addressing complaints in a timely and just manner by requiring the commission to establish timelines for acting on a complaint and reporting the number of complaints that had been pending for more than a year and the number that had been referred to law enforcement.

The bill would address questions from the public about how complaints are filed and investigated by requiring the commission to publish on its website a step-by-step guide to filing a complaint. The information would clarify that confidentiality regarding a complaint applied to the commission and not to the person making the complaint.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Including two medical schools in the Joint Admission Medical Program

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 9 ayes — C. Turner, Stucky, Frullo, Howard, Pacheco, Schaefer, Smithee, Walle, Wilson

0 nays

2 absent — Button, E. Johnson

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 2573:*
For — Ankita Brahmaroutu, Texas Medical Association; (*Registered, but did not testify:* Miriam Cepeda, City of Edinburg; Jesse Ozuna, Doctor's Hospital at Renaissance; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Carrie Kroll, Texas Hospital Association; Michelle Romero, Texas Medical Association)

Against — None

On — Stephen Smith, Dell Medical School at the University of Texas at Austin; Paul Hermesmeyer, Joint Admission Medical Program; (*Registered, but did not testify:* Rex Peebles, Higher Education Coordinating Board)

BACKGROUND: Education Code sec. 51.822 governs the Joint Admission Medical Program, which is administered by the Joint Admission Medical Program Council to:

- provide services to support and encourage highly qualified, economically disadvantaged students pursuing a medical education;
- award undergraduate and graduate scholarships and summer stipends to such students; and
- guarantee the admission of these students to at least one

participating medical school.

Education Code ch. 63, subch. A governs the Permanent Health Fund for Higher Education, a special fund in the treasury outside of the general revenue fund that distributes funds to certain medical programs for research, health education, and treatment programs.

DIGEST:

CSSB 479 would add the Dell Medical School at the University of Texas at Austin and the School of Medicine at the University of Texas Rio Grande Valley to the list of medical schools participating in the Joint Admission Medical Program.

As soon as practicable after the effective date of the bill, the schools would have to enter into the required agreements with the Joint Admission Medical Program Council and select appropriate faculty members to represent the schools on the council. The schools would provide internships and mentoring under the program by the 2020-2021 academic year, but would not be required to admit participating students to their medical schools under the program before the 2022-2023 academic year.

The bill also would add both schools to the list of medical and dental units subject to Texas Higher Education Coordinating Board oversight and make the Dell Medical School at the University of Texas at Austin eligible to receive funds from the Permanent Health Fund for Higher Education beginning in state fiscal year 2020.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY:

CSSB 479 would allow the Dell Medical School at the University of Texas at Austin and the School of Medicine at the University of Texas Rio Grande Valley, the state's newest public medical schools, to participate in the Joint Admission Medical Program. Every other public medical school in Texas participates in the program, which has proven to be successful in helping Texans from socioeconomically disadvantaged backgrounds become doctors, and so it is only appropriate that these two schools be added to the list of participants.

The bill also would update relevant sections of the Education Code to include these two schools and allow the Dell Medical School at the University of Texas at Austin to receive important funds from the Permanent Health Fund for Higher Education.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Requiring health plans to cover the cost of newborn screening tests

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Lucio, Oliverson, G. Bonnen, S. Davis, Julie Johnson, Lambert, Paul, C. Turner

0 nays

1 absent — Vo

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 2582:*
For — (*Registered, but did not testify:* Eric Kunish, National Alliance on Mental Illness-Austin; Greg Hansch, National Alliance on Mental Illness-Texas; Will Francis, National Association of Social Workers-Texas Chapter; Marshall Kenderdine, Texas Academy of Family Physicians; Jamie Dudensing, Texas Association of Health Plans; Mike Meroney, Texas Association of Health Underwriters; Cameron Duncan, Texas Hospital Association; Troy Alexander, Texas Medical Association; John Carlo, Texas Medical Association, Texas Pediatrics Association, Texas Association of Family Medicine; Clayton Travis, Texas Pediatrics Society)

Against — None

On — (*Registered, but did not testify:* Doug Danzeiser, Texas Department of Insurance; Grace Kubin, Texas Department of State Health Services)

BACKGROUND: 42 U.S.C. sec. 300e-1 requires health plans to cover well-child care from birth.

Health and Safety Code sec. 33.011 requires that newborns be tested for certain diseases and disorders.

DIGEST: CSSB 747 would prohibit health benefit plans that provided maternity

benefits or accident and health coverage for additional newborn children from excluding coverage for newborn screenings and the cost of test kits.

The Department of State Health Services (DSHS) would be required to publish the cost of newborn screening test kits on its website along with instructions for the full claim and reimbursement process for the kits. The bill would authorize DSHS to change the cost published no later than 90 days before the date DSHS published notice of a change on its website, and DSHS would have to keep a record of the previous cost for one year.

The executive commissioner of the Health and Human Services Commission would have to adopt any rules necessary to implement the bill.

The bill would take effect September 1, 2019, and would apply only to health benefit plans delivered, issued for delivery, or renewed on or after January 1, 2020.

SUPPORTERS SAY:

CSSB 747 would ensure that health benefit plans covered the cost of newborn screening test kits that were purchased from the state by pediatricians. By requiring that the Department of State Health Services post a notice of test kit price changes on its website 90 days in advance, physicians, health benefit plans, and other stakeholders would be able to prepare for price fluctuations.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Reducing the maximum civil penalty for deceptive trade violations

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 9 ayes — Martinez Fischer, Darby, Beckley, Collier, Landgraf, Moody, Parker, Patterson, Shine

0 nays

SENATE VOTE: On final passage, April 17 — 31-0, on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: Business and Commerce Code ch. 17 subch. E, the Deceptive Trade Practices-Consumer Protection Act, allows the consumer protection division of the attorney general's office to sue a person engaged in false, misleading, or deceptive acts or practices in the conduct of any trade or commerce.

The division may request, and a court may award, a civil penalty to be paid to the state of up to $20,000 per violation and, if the person was attempting to defraud a consumer aged 65 or older, an additional amount of up to $250,000.

DIGEST: SB 2140 would reduce the maximum civil penalty per violation of the Deceptive Trade Practices-Consumer Protection Act from $20,000 to $10,000.

The bill would take effect September 1, 2019, and would apply only to an action filed by the consumer protection division on or after that date.

SUPPORTERS SAY: SB 2140 would maintain the deterrent to violations of consumer protection law while reducing the excessive penalty that could result from a situation in which many violations occurred together as a single series of events.

A wide range of actions can constitute a violation under the Deceptive

Trade Practices-Consumer Protection Act (DTPA). Consequently, a series of individual actions that were part of one scheme could add up to a cumulative penalty of millions of dollars. The bill would remedy this by reducing the per-violation civil penalty from $20,000 to $10,000.

Although current and past attorneys general largely have used the DTPA judiciously, this bill would help ensure that the power given to the office by the DTPA to punish companies would not be abused in the future.

OPPONENTS SAY:

SB 2140 could embolden deceptive and harmful conduct by reducing the maximum civil penalty per violation of the DTPA, and there is no reason to hamstring efforts to enforce the act.

SUBJECT: Requiring controlled substances reports; expanding PMP access

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — S. Thompson, Wray, Allison, Frank, Guerra, Ortega, Price, Sheffield, Zedler

0 nays

2 absent — Coleman, Lucio

SENATE VOTE: On final passage, March 26 — 31-0

WITNESSES: *On House companion bill, HB 1668:*
For — (*Registered, but did not testify:* Stephanie Chiarello, Texas Pharmacy Association; Tammy Cohen, Texas Society of Health-System Pharmacists, John Heal, Texas TrueCare Pharmacies, Bradford Shields, Texas Federation of Drug Stores, Texas Society of Health-System Pharmacists)

Against — None

On — (*Registered, but did not testify:* Allison Benz, Texas State Board of Pharmacy)

BACKGROUND: The Texas Prescription Monitoring Program (PMP) is a database used to collect and monitor prescription data on all Schedule II, III, IV, and V controlled substances dispensed by a pharmacy in Texas or dispensed to a Texas resident by a pharmacy in another state.

Health and Safety Code sec. 481.0764(a) requires a person authorized under HIPAA to receive medical information submitted to the Texas State Board of Pharmacy from the PMP to access this information before prescribing or dispensing opioids and other certain Schedule II, III, and IV drugs to a patient.

Texas Attorney General Opinion No. GA-0384, issued December 21,

2005, found that provisions of SB 410 by Whitmire as enacted by the 79th Legislature relating to the licensing of Canadian pharmacies and the ability to import pharmaceutical drugs from Canada would violate the U.S. Federal Food, Drug, and Cosmetic Act of 1938.

The Texas State Board of Pharmacy does not implement the provisions of SB 410 relating to Canadian pharmacies based on the Texas Attorney General's opinion from 2005.

DIGEST:

SB 683 would require certain reports from pharmacists dispensing Schedule II controlled substances and wholesale distributors of Schedule II-V drugs, expand access to the Prescription Monitoring Program (PMP), allow Class E pharmacies licensed in other states to act as processing facilities, and repeal certain provisions of the Texas Pharmacy Act relating to Canadian pharmacies and the license renewal of pharmacies subject to disciplinary actions in other states.

Pharmacist reports. The bill would require pharmacists dispensing Schedule II controlled substances who had not dispensed any controlled substance prescriptions during a period of seven consecutive days to send a report to the Texas State Board of Pharmacy (TSBP) indicating this, unless the pharmacy had obtained a waiver or permission to delay reporting to the board.

Access to PMP. The bill would add certain individuals to the list of those who could access information submitted under the PMP, provided that access to this information also was authorized under HIPAA. These individuals would include:

- a pharmacist or pharmacist-interns, pharmacy technicians, and pharmacy technician trainees acting at the direction of a pharmacist who were inquiring about a recent Schedule II, III, IV, or V prescription history of a particular patient of the pharmacist; or
- a practitioner inquiring about the activity of an individual to whom the practitioner had delegated prescribing authority.

The bill would add pharmacists, pharmacist technicians, technician trainees, pharmacist interns, and practitioners who were authorized to

electronically access the PMP to the list of people permitted to directly access prescription monitoring information available from other states pursuant to an interoperability agreement entered into by TSBP.

Wholesale distributor reports. The bill would amend reporting requirements for a wholesale distributor, requiring it to report to TSBP the distribution of all Schedules II, III, IV, and V controlled substances to a person in Texas, rather than information that the distributor was required to report to the U.S. Food and Drug Administration. The distributor would be required to report the information with the same frequency it reported to the federal Drug Enforcement Administration.

Work group meetings. The bill would require the interagency prescription monitoring work group to meet when necessary as determined by TSBP, instead of quarterly.

Out-of-state pharmacies. The bill would add to the list of out-of-state pharmacies that qualified to receive a Class E pharmacy license or nonresident pharmacy license pharmacies whose primary business was to process a prescription drug order for a patient, including a patient in Texas, or to perform another pharmaceutical service, as defined by TSBP rule.

Canadian pharmacies. The bill would repeal sections of the Occupations Code relating to the designation, inspection, on-site supervision, and practice of Canadian pharmacies.

Out-of-state pharmacy license renewal. The bill also would repeal the statute preventing a pharmacy from renewing its license in Texas if the pharmacy's license to operate in another state had been suspended, revoked, canceled, or subject to an action that prohibited the pharmacy from operating in that state.

The bill would take effect September 1, 2019.

SUPPORTERS SAY:

SB 683 would provide clarity to existing law by eliminating inconsistencies and conflicting provisions in the Texas Pharmacy Act, specifying who was authorized to access information in the Prescription

Monitoring Program, and clarifying reporting requirements for pharmacies and wholesale distributors. The bill also would bring the Occupations Code in line with federal law and FDA rules by eliminating provisions requiring the Texas State Board of Pharmacy (TSBP) to designate and inspect Canadian pharmacies.

The provisions of the bill allowing pharmacists and practitioners to access the prescribing history of those to whom they have delegated prescribing authority would provide accountability in the prescribing process and ensure that physicians bear the ultimate responsibility for the actions of their delegates.

SB 683 would ensure that pharmacies were not unnecessarily penalized for actions taken against pharmacies with the same owners in other states by removing the prohibition on license renewal. This would not prevent TSBP from opening investigations, but would simply prevent pharmacies from being penalized for the actions of other pharmacies outside of Texas.

The bill also would provide for more complete drug reporting from wholesalers by requiring these distributors to provide information on all Schedule II, III, IV, and V drugs to the board.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Including cuttings in citrus budwood and nursery stock certifications

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 9 ayes — Springer, Anderson, Beckley, Buckley, Burns, Fierro, Meza, Raymond, Zwiener

0 nays

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion, HB 1489:*
For — Alan Heinrich, Tree Town USA; (*Registered, but did not testify*: J Pete Laney, Texas Citrus Mutual; Marissa Patton, Texas Farm Bureau; Ryan Skrobarczyk, Texas Nursery and Landscape Association)

Against — None

On — Jessica Escobar, Texas Department of Agriculture

BACKGROUND: Agriculture Code ch. 19 establishes the citrus budwood and citrus nursery stock certification programs with the goal of producing healthy citrus trees free from pathogens and disease. Citrus budwood is defined as a part of a stem of branch of a citrus tree with buds used in propagation by budding or grafting. A citrus nursery is defined as a producer of citrus trees propagated through budding or grafting.

DIGEST: SB 979 would revise definitions of "citrus budwood" and "citrus nursery stock" to add cuttings as an acceptable form of propagation for the citrus budwood and citrus nursery stock certification programs.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY: Cuttings should be included as an accepted form of propagation for citrus. The use of cuttings allows for a producer to turn a crop much faster, and

plants propagated from cuttings pose no more significant risk of disease infection than plants produced by budding or grafting.

OPPONENTS SAY:

No concerns identified.

SUBJECT: Expanding default presumptions regarding benefits for peace officers

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 7 ayes — Nevárez, Paul, Burns, Clardy, Goodwin, Lang, Tinderholt

0 nays

2 absent — Calanni, Israel

SENATE VOTE: On final passage, April 11 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 1492:*
For — Chris Jones, Combined Law Enforcement Associations of Texas; (*Registered, but did not testify:* David Sinclair, Game Warden Peace Officers Association; Ray Hunt, Houston Police Officers Union; Micah Harmon, Lavaca County Office of the Sheriff; Richard Jankovsky, Diane Martinez, and Clay Taylor, Texas Department of Public Safety Officers Association; Noel Johnson, TMPA; Glenn Deshields, Texas State Association of Fire Fighters; Mario Martinez, Texas State Troopers Association)

Against — Adam Haynes, Conference of Urban Counties; David Reagan, Texas Municipal League Intergovernmental Risk Pool; (*Registered, but did not testify:* Pamela Beachley, Texas Association of Counties Risk Management Pool)

On — Amy Lee, Texas Department of Insurance-Division of Workers' Compensation

BACKGROUND: Government Code ch. 607 subch. B establishes the presumption that firefighters and emergency medical technicians (EMTs) who contracted certain medical conditions leading to death or partial or total disability have done so during the course and scope of employment.

Sec 607.052(a) establishes that this presumption applies only to those who had received, after becoming a firefighter or EMT, a physical examination that failed to reveal evidence of the illness or disease for which benefits or

compensation were sought; who had been employed for five or more years as a firefighter or EMT; and who had sought benefits or compensation for a disease or illness that was discovered during employment as a peace officer.

Secs. 607.053, 607.054, and 607.056 include the following medical conditions, respectively, under this presumption:

- smallpox or other diseases against which the firefighter or EMT had been immunized;
- tuberculosis or other diseases of the lungs or respiratory tract; and
- acute myocardial infarction or stroke.

In the case of acute myocardial infarction or stroke, the presumption applies only if the condition occurred while the firefighter or EMT was on duty and was engaging in nonroutine stressful or strenuous physical activity, not including clerical, administrative, or nonmanual activities.

Sec. 607.052 establishes that the presumption does not apply:

- to survivor's benefits paid to the families of firefighters or EMTs who died in the line of duty;
- in a cause of action brought in state or federal court other than one involving judicial review of employment-related benefits or compensation;
- in a determination regarding benefits or compensation involving life insurance purchased by a firefighter or EMT; or
- if the disease or illness is known to be caused by tobacco use and the firefighter or EMT is or has been a user of tobacco or the firefighter or EMT's spouse has been a user of tobacco consumed through smoking.

Sec. 607.058 allows for the presumption to be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a firefighter or EMT caused the individual's disease or illness.

Sec. 607.004(a) entitles firefighters and EMTs to preventive immunization for any disease to which the firefighter or EMT may be exposed in performing official duties and for which immunization is possible.

DIGEST:

SB 1582 would extend to peace officers the provisions that currently apply to firefighters and emergency medical technicians for determining, for the purposes of benefits provided under certain employee benefit plans, whether certain medical conditions specified in the bill were contracted in the course and scope of their employment.

The bill also would entitle a peace officer to preventive immunization for any disease to which the peace officer might be exposed in performing official duties and for which immunization was possible.

The bill would take effect on September 1, 2019, and would apply to a claim for benefits or compensation brought on or after that date.

SUPPORTERS SAY:

SB 1582 would ensure peace officers had coverage for debilitating or fatal illnesses contracted on the job by extending to them the same presumptions regarding those illnesses currently extended to firefighters and emergency medical technicians.

Peace officers are more likely to suffer from disease, but they often are denied workers' compensation benefits because they do not receive the presumption that their disabilities or deaths were caused by their work, leaving them or their loved ones with significant medical bills. This bill would provide to peace officers the same presumptions that currently apply to other first responders when determining the applicability of benefits.

OPPONENTS SAY:

SB 1582 is well intentioned, but there is not enough evidence suggesting that peace officers are prone to the same specific medical conditions as firefighters and emergency medical technicians. Before extending this benefit, a study should be conducted to establish more conclusively that these specific medical conditions actually correlate with work as a peace officer.

Extending the presumption that medical conditions were work-related could put a financial strain on counties, many of which are self-insured. The bill could harm such a county's ability to keep the insurance systems solvent and thus their ability to provide needed aid to the peace officers.